

ORDINANCE NO. 12-2019

AN ORDINANCE AMENDING CHAPTER 28 “SOLICITATIONS,” ARTICLE I, “IN GENERAL,” AND ARTICLE II, “PERMIT,” REPEALING CHAPTER 28 “SOLICITATIONS,” ARTICLE III, “ROADWAYS,” AND ARTICLE IV, “AGGRESSIVE PANHANDLING,” AND AMENDING CHAPTER 18 “MOTOR VEHICLES AND TRAFFIC,” ARTICLE IX, “PEDESTRIANS”, OF THE CODE OF THE CITY OF ABILENE, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, the United States Supreme Court has ruled in *Reed v. Town of Gilbert* that restrictions on “protected speech” that are based on the kind of message conveyed are “content-based,” and therefore severely restricted; and

WHEREAS, the City’s current ordinance regulating door-to-door solicitation regulates “canvassing”, “solicitation”, and “peddling”, thus basing its regulation of protected speech on the kind of message conveyed by such protected speech; and

WHEREAS, the purposes of Chapter 28 of the Code of Ordinances, namely the protection of citizens from criminal activity, uninvited solicitors, and protection of the public health, safety, and welfare, may be accomplished by amending said chapter; and

WHEREAS, the safety of pedestrians and motorists at specific intersections within the city may be protected by amending Chapter 18, Article IX, with narrowly drawn conduct-based regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 28, Article I, “In General,” and Article II, “Permit,” of the Code of Ordinances of the City of Abilene, Texas, are hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 2: That Chapter 28, Article III, “Roadways,” and Article IV, “Aggressive Panhandling,” of the Code of Ordinances of the City of Abilene, Texas, are hereby repealed as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 3: That Chapter 18, Article IX, “Pedestrians,” of the Code of Ordinances of the City of Abilene, Texas, is hereby amended as set out in Exhibit B, attached and made a part of this ordinance for all purposes.

PART 3: That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction,

EXHIBIT "A"

ARTICLE I. IN GENERAL:

Sec. 28-1. Purpose of chapter.

The purpose of this chapter is to protect against criminal activity, including fraud and burglary, protect the privacy of the citizens of the city, and to otherwise preserve the public health, safety, and welfare.

Sec. 28-3. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them by this section:

Business day means any calendar day except Saturday, Sunday or any city holiday.

City manager means the city manager of the City of Abilene or designee.

Official shall mean city peace officers, city secretary, or city manager or designee who administers, implements, and enforces the provisions of this chapter.

Solicitation or solicit means the action of any solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise to go in and upon a private residence in the City, not having been requested or invited to do so by the owner or occupant of such residence, for the purpose of soliciting orders for the sale of services, goods, wares and merchandise, or for the purpose of disposing of or peddling or hawking such services, goods, wares and merchandise, or to request contribution of funds or anything of value.

Sec. 28-4. Hours of solicitation at private residences.

Solicitation shall be unlawful at private residences between the hours of 7:00 p.m. and 9:00 a.m. unless otherwise posted by the private property owner or by someone with apparent authority to act for the owner. This provision does not apply where the person is on the property by express, prior invitation of the owner of the property or a person residing on the premises.

Sec. 28-5. Entry upon premises unlawful.

(a) It shall be unlawful for any person to solicit at any time upon any private property in the city where the owner, occupant, or person legally in charge of the premises has posted at the entry to the premises, or at the entry to the principal building on the premises, the words "No Solicitation," or words of similar import.

(b) It shall be unlawful for any person to solicit at any entrance to a residence other than the front door.

ARTICLE II. PERMIT

Sec. 28-11. Permit requirements and exemptions.

It shall be unlawful for any person to solicit within the city without first obtaining a permit issued by the city license officer, unless otherwise exempted by state or federal law.

Sec. 28-12. Exhibition of permit required.

- (a) It shall be unlawful for any person to, while soliciting, fail to conspicuously display on or about their person the permit issued by the city.
- (b) "Conspicuously displayed" shall mean displayed to the front and visible to whomever the permit holder is conversing at all times they are engaged in a permitted activity.

Sec. 28-13. Permits for minor solicitors.

- (a) No person under the age of 18 shall be permitted to engage in soliciting except as provided in this section.
- (b) A permit shall be obtained by a sponsoring person, company, or organization for the conduct of any solicitation activities involving in whole or in part a sales force of one or more persons under the age of eighteen years of age.
- (c) The sponsor shall be responsible for supervising and controlling all persons soliciting under the sponsor's permit.
- (d) The sponsor shall provide to each individual in its sales force a badge or other easily readable form of identification that identifies the name of the sponsor and the name of the individual. The sponsor shall require all individuals in their sales force to wear the identification so that it is clearly visible at all times while soliciting.

Sec. 28-14. Application.

- (a) Applicants for permits under this chapter must file with the city license officer an application in writing on a form obtained from the license officer and provide the following:
 - (1) A valid state issued Driver's License or state issued photo identification.
 - (2) The number of the limited sales tax permit issued to the business by the state comptroller's office, if applicable.
 - (3) A brief description of the activity or business to be conducted.
 - (4) The appropriate fee.

Sec. 28-18. Contents.

(a) Each permit issued under this article shall show the name of the permitted individual, business address, a description of the type of solicitation, the date of issuance, and the expiration date of such permit.

(b) The permit shall be numbered and printed in black; except, that the following shall be printed prominently thereon in red: "The issuance of this license is not an endorsement by the City of Abilene, or any of its officers or employees, and expires _____."

Sec. 28-21. Denial.

An application for permit may be denied to a person under this article for the following reasons.

(a) Because of a person's conviction of a felony or misdemeanor if the crime directly relates to fraudulent or deceitful conduct of a solicitor or solicitor's business or results from an assault against person.

(b) An investigation reveals that the applicant falsified information on the application.

(c) The applicant is a registered sex offender.

(d) The applicant has had a permit revoked for any reason within the past three years.

Sec. 28-22. Revocation.

(a) Permits issued under the provision of this article may be revoked for any of the following causes by any official of the City of Abilene:

(1) Fraud, misrepresentation or false statement contained in the application for permit.

(2) Fraud, misrepresentation or false statement made in the course of carrying on his business.

(3) Any violation of this chapter.

(4) Conviction of a misdemeanor or any felony if the crime directly relates to the conduct of the business.

(5) Conducting the business of solicitation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, and general welfare of the public.

(b) Notice of revocation of a permit shall be given verbally or in writing, and specify the grounds of the revocation.

(c) When the solicitor receives notice that their permit has been revoked, they shall immediately surrender their permit to the revoking official.

ARTICLE III. PENALTY

Sec. 28-23. Penalty.

Any person who engages in any activity specifically prohibited in this chapter, may be subject to prosecution for a class C misdemeanor and a fine not to exceed five hundred dollars (\$500.00).

EXHIBIT "B"

ARTICLE IX. PEDESTRIANS

Secs. 18-167. Stopping, Standing, Sitting or Remaining at Certain Intersections within the City of Abilene

(a) No pedestrian or other person, who is within a roadway, may stop, stand, sit or remain in any intersection or crosswalk for a period longer than is necessary to traverse said intersection or crosswalk.

(b) No pedestrian or other person may stop, stand, sit or remain within the immediate vicinity of any vehicle stopped on a roadway.

(c) It is specifically provided, however, that a pedestrian or other person may stop, stand, sit or remain on the surrounding sidewalks, but not in or on the roadway itself.

(d) No pedestrian or other person shall stop, stand, sit or remain on or under any portion of a median, bridge, overpass, or viaduct for longer than is necessary to safely traverse said median, bridge, overpass or viaduct.

(e) The above provisions apply at the following locations:

(1) All intersections, access roads, and ramps adjacent to Winters Freeway from S. 1st Street to Buffalo Gap Road

(2) All intersections adjacent to:

Buffalo Gap Road from S. 27th to Antilley Road

Southwest Drive from Winters Freeway to Catclaw Drive

Business I-20 from US-83 (Winters Freeway) to N. Judge Ely Blvd.

S. 14th Street from Willis Street to Butternut Street

Judge Ely Blvd. from ES 11th Street to EN 10th Street

Ambler Ave./SH 351 from Grape Street to East Lake Road

Treadaway Blvd. from E. Hwy 80 to S. 11th Street

Treadaway Blvd. from S. 27th Street to Industrial Blvd.

(f) Definitions:

"Median" shall mean that area or portion of a divided street, road or highway within the City separating lanes of traffic of said street, road or highway and shall be held to include the curb, if any, at the outer edge of said area.

“Roadway” shall mean that portion of the public street which is improved, designed or ordinarily used for vehicular travel, including the curb, berm or shoulder, whether or not improved.

“Sidewalk” shall mean that improved surface which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, and is improved and designed for or is ordinarily used for pedestrian travel.

Secs. 18-168-18-177. Reserved.

such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 4: That any person, firm, or corporation violating the provisions of this Ordinance shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

PASSED ON FIRST READING this 14th day of February, 2019.

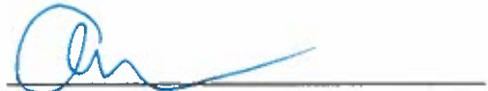
A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 24th day of February, 2019, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 4:30 p.m. on the 28th day of February, 2019, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING this 28th day of February, 2019.

ATTEST:



CITY SECRETARY



MAYOR



CITY ATTORNEY

